

ORIGINAL

CV19-5169

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

MAUSKOPF, J.

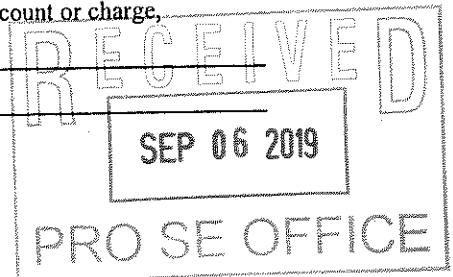
United States District Court		District Eastern District NY
Name (under which you were convicted): ARTURO MUJICA		Docket or Case No.:
Place of Confinement: Green Haven Corr. Fac. P.O. Box 4000, Stormville, NY 12582		Prisoner No.: DIN: 14A-1686
Petitioner (include the name under which you were convicted) Arturo Mujica		Respondent (authorized person having custody of petitioner) v. MARK ROYCE
The Attorney General of the State of New York		FILED IN CLERK'S OFFICE U.S. DISTRICT COURT, E.D.N.Y. ★ SEP 06 2019 ★

PETITION

BROOKLYN OFFICE

- (a) Name and location of court that entered the judgment of conviction you are challenging: Kings
County - Supreme Court - 320 Jay Street
Brooklyn, NY 11201
- (b) Criminal docket or case number (if you know): Ind. #'s: 3972/2012 and 10595/2013
- (a) Date of the judgment of conviction (if you know): April 7, 2014
- (b) Date of sentencing: 4/7/14
- Length of sentence: 32 years - 8 years post release supervision
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
- Identify all crimes of which you were convicted and sentenced in this case: first degree course of sexual
conduct against a child (PL 130.75(1)(b)); Second degree course of sexual conduct
against a child (PL 130.80(1)(a)); 24 counts of sexual criminal act - second degree (PL 130.45(1))
six counts of second degree sexual abuse (PL 130.60(2)); and endangering welfare
of a child (PL 260.10(1)).
- (a) What was your plea? (Check one)

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>
- (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____



(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at either a pretrial hearing, trial or a post-trial hearing?

Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☐

9. If you did appeal, answer the following:

(a) Name of court: NYS Supreme Court - Appellate Division Second Department

(b) Docket or case number (if you know): A.D. # 2014-04610

(c) Result: Affirmed Judgment

(d) Date of result (if you know): Jan. 18, 2017

(e) Citation to the case (if you know): 146 AD3d 902

(f) Grounds raised: (1) Sufficiency of the evidence; People failed to prove appellant's guilt beyond a reasonable doubt. (2) Whether the 30 Counts in the indictment that charged a single act of sex abuse in a several month period were duplicative. When complainant testified at trial that the abuse occurred as often as every day. (3) Years prison sentence was excessive.

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: NYS Court of Appeals

(2) Docket or case number (if you know): _____

(3) Result: Ordered that the application is denied.

(4) Date of result (if you know): June 20, 2017

(5) Citation to the case (if you know): 29 NY3d 1083

(6) Grounds raised: Appellant seek leave to Appeal on all issues raised in the Appella Division, On Supplement argument raised with a reasonable doubt issue whether defense counsel's failure to argue insufficiency on motion - Constituted ineffective assistance of Counsel.

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: NYS Supreme Court; Kings County

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): 4/25/2018

(4) Nature of the proceeding: Motion to vacate Judgment CPL 440.10

(5) Grounds raised: ① Defense Counsel's failure to advise defendant about his sentencing exposure. ② Counsel's failure to advise defendant to accept or reject the plea offer constituted ineffective assistance of counsel (on both) causing defendant to turn down a offer of 5 years then to be sentenced to 32 years.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: Denied

(8) Date of result (if you know): 12/17/218 (Hartington - AJSC)

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: Appellate Division Second Dept.

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): 1/23/2019

(4) Nature of the proceeding: Leave to Appeal the denial of CPL 440.10

(5) Grounds raised: Abuse of discretion to the denial of defendant - Appellant's CPL 440.10 Motion

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: _____

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: The People failed to Prove Appellant's Guilt Beyond a Reasonable doubt, and the Verdict was Against the weight of the Evidence.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The

instances of Purported sexual abuse were so regular over so long a period of time that surely one other person - among the four females, including two adults also living in the same one-bedroom apartment - would have seen or heard something that they recognized as inappropriate. But according to Maribel Mujica, the complainant as well as her mother and aunt, no one ever did. Over the course of 12 years, not a single one of the more than 1,800 sexual interactions that appellant allegedly had with his eldest daughter ever caught the eye or ear of the two adults women and two other girls, when they were of age, who all live together, rendering Maribel's testimony incredible.

(b) If you did not exhaust your state remedies on Ground One, explain why: Liberal Constructive is sought.

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO: The Thirty Count in the Indictment for a single Act of sex abuse in a several month period were Duplicious in light of testimony from
Complainant
 (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): As even the trial court acknowledged to defense counsel, "You know full well, the People know full well, I know full well that there were multiple acts during the periods where the People charged a single act." The court was referring to 12 several-month periods from the time the complainant was 13 until she was 15 years old. That multiple, as opposed to single, acts of abuse occurred during each of those periods was not exclusive knowledge of the court and the parties. The jury received the same impression, too, as the complainant testified that the supposed abuse became more frequent as she grew older and as often as every day during the single-act period in question. Each of the 30 corresponding single-act counts was therefore duplicious, depriving appellant of his due process right to fair trial, and should have been dismissed. Should be liberally construed.

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE: Petitioner's 32 year Prison Sentence was excessively Harsh - Violating due process by punishing him for exercising Constitutional choice.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Prior to trial at a time when everyone - from the People, to the defense, to the trial court - was fully aware of the allegations, the People offered appellant a five-year prison term. He declined, and the trial court, following a trial that proceeded as expected, sentenced appellant to 32 years in prison. This is more than six fold increase from the People's pretrial offer proves that appellant's sentence was both excessive and violated due process, punishing him for maintaining his innocence and exercising his Constitutional right to a trial. Liberal Confrontation is sought

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: Ineffective Assistance of Counsel for failure to advise defendant about sentencing exposure, and failure to advise defendant to reject or accept plea.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____
Counsel never told defendant that he could end up in prison for 32 years in prison, nor did counsel, advise defendant, to accept or reject the 5 years plea that he was offered. Also, during the Plea Colloquy The interpreter was having problems with the Petitioner understanding the plea being a confused during plea. Liberal Construe is Sought.

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Motion to Vacate
under CPL 440.10

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion to Vacate Judgment under CPL § 440.10

Name and location of the court where the motion or petition was filed: NYS Supreme Court,
Kings County Crim. Court, 320 Jay St, Brooklyn NY 11201

Docket or case number (if you know): _____

Date of the court's decision: 12/17/18 (Harrington, J.)

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Leave Sought CPL 460.5
Appellate Div. 2nd Dept. 45 Monroe Pl, Brooklyn, NY 11201

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

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GROUND FIVE: Appellate Counsel was ineffective for failing to raise that the trial court below committed several Mode-of-Proceeding Errors.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The trial court committed several mode-of-proceeding errors in the manner it handled or addressed several of the relevant jury notes. Denying Petitioner a fair trial.

(b) If you did not exhaust your state remedies on Ground One, explain why: Because I just received the assistance from another offender to be able to file my writ of Error Coram nobis.

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(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

Appellate Counsel's failure

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND SIX Ineffective Assistance of Appellate Counsel for failing to raise the grossness and pervasiveness of the prosecutorial misconduct

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The grossness and pervasiveness of the prosecutorial misconduct committed by the People during their final summation to the jury denying petitioner a fair trial

(b) If you did not exhaust your state remedies on Ground Two, explain why:

Ineffective assistance
Because I just received the assistance of another offender who will prepare my writ of Error Coram Nobis

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective assistance of Appellate Counsel

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

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Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two

GROUND Seven Ineffective assistance of Appellate Counsel for failing to raise that the trial court had erred

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The trial court had erred when it failed to ever rule upon and decide that critical branch of defense counsel's pretrial omnibus motion which had sought dismissal of the indictment pursuant to C.R.C. 210.35 on the ground that the indictment had not been voted by a proper or legal quorum of grand jurors.

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(b) If you did not exhaust your state remedies on Ground Three, explain why?

Because I just received the assistance of another offender who will prepare my writ of error coram nobis.

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

Appellate Counsel's failure

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND Ineffective assistance of Appellate Counsel for failing to raise the Trial Court's failure and error

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The trial court erred and failed to ever rule upon Petitioner's, pro se, C.P.L. 30.30 motion for a Speedy trial.

- (b) If you did not exhaust your state remedies on Ground Four, explain why:

Because I just received the assistance of another offender who will prepare my writ of Error Coram Nobis

- (c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

Appellate Counsel's Failure

- (d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

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(c) Do you have any other remedies (e.g., habeas corpus, writ of habeas corpus, administrative remedies, etc.) that you have not exhausted? If so, state remedies on Ground One.

GROUND

Ineffective assistance of Trial Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Trial Counsel failed to object/challenge the (1) trial Court committed several mode-of-proceeding errors; (2) the grossness and pervasiveness of the prosecutorial misconduct on summation; (3) Trial Court's failure to rule and decide defense omnibus motion and Petitioner's C.P.L. 30.30 motion.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

Because I just received the assistance from another offender to be able to file my writ of Error coram nobis.

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes ☒ No(2) If you did not raise this issue in your direct appeal, explain why:

Appellate Counsel's failure

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☒

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: I was recently able to find another offender who is willing to help me prepare and file my writ of Error Coram Nobis

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

Grounds 5 through 8

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinions or orders, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

I ask that this Court grant a Stay of
 Petitioner's habeas Corpus and to allow
 Petitioner to present grounds five, six,
 seven and eight to the appellate Division.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: a stay to exhaust
grounds 5-8 and for grant the petition

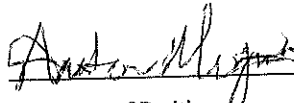
or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this
Petition for Writ of Habeas Corpus was placed in the prison mailing system on August 28, 2019

(month, date, year).

Executed (signed) on August 28, 2019 (date).


Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing
this petition. _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORKARTURO MUJICA

Plaintiff

- v. -

**REQUEST TO PROCEED
IN FORMA PAUPERIS**MARK ROYCE

Defendant(s)

I, ARTURO MUJICA, am the plaintiff in the above entitled case. I hereby request to proceed without being required to prepay fees or costs or give security therefore. I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore, and I believe I am entitled to redress.

1. If you are presently employed:

- a) give the name and address of your employer
b) state the amount of your earnings per month

N/A2. If you are **NOT PRESENTLY EMPLOYED**:

- a) state the date of start and termination of your last employment
b) state your earnings per month

YOU MUST ANSWER THIS QUESTION EVEN IF YOU ARE INCARCERATED.

3. Have you received, within the past twelve months, any money from any source? If so, name the source and the amount of money you received.

Family \$20.00 or \$0

a) Are you receiving any public benefits?

☒ No ☐ Yes, \$ _____

b) Do you receive any income from any other source?

☒ No ☐ Yes, \$ _____

4. Do you have any money, including any money in a checking or savings account? If so, how much?

N/A

Do you own any apartment, house or building, stocks, bonds, notes, automobiles or other property? If the answer is yes, describe the property and state its approximate value.

☒ No

☐ Yes, _____

6. List the person(s) that you pay money to support and the amount you pay each month.

N/A

7. Do you pay for rent or for a mortgage? If so, how much each month?

N/A

8. State any special financial circumstances which the Court should consider.

N/A

I understand that the Court shall dismiss this case if I give a false answer to any questions in this declaration. In addition, if I give a false answer I will be subject to penalties for perjury.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: _____

August 28, 2019

(signature)

Anna Hays